

REMARKS/ARGUMENTS

In response to the Office Action mailed October 5, 2005, Applicants request reconsideration. No claims are added or cancelled in this Amendment so that claims 29 and 31-69 remain pending.

The invention relates to ensuring that persons viewing an audiovisual program, for which they may receive academic credit, are actually attentive to the audiovisual program. In order to confirm that attention, as each audiovisual program is presented, from time-to-time a viewing confirmation code is presented to the viewer. The viewer then enters, through some entry means of the apparatus supplying the audiovisual program, an identical viewing confirmation code in order to confirm the viewing of the program. This response requires no thinking, no solution to a problem, no recall of facts, and no calculation. All that is required is entry of a viewing confirmation code identical to the code that is presented. When the viewer-entered viewing confirmation code is identical to the viewing confirmation code presented, then attention to the program can be confirmed. Entry of a different viewing confirmation code or failure to enter any viewing confirmation code is considered to indicate inattentiveness. Of course, an inadvertent error in entering a viewing confirmation code might be counted as inattention. In one aspect of the invention, an opportunity is presented to correct such an inadvertent error. In another aspect of the invention, if the entered confirmation code is not identical to the presented viewing confirmation code, but is in sufficient agreement with the presented confirmation code, then the viewer is considered attentive. See claims 68 and 69 providing for agreement of a transmitted and an input viewing code within a range. Many claims provide a range of time intervals between presentation of a viewing confirmation code and input of the identical viewing confirmation code for determining attentiveness.

There is no requirement that each subsequently presented viewing confirmation code be identical to the previously presented viewing confirmation code and the claims make this point clear. The presentation and response entry of viewing confirmation codes and the sequential presentation of varying confirmation codes are illustrated in Figures 6-11 and described from page 26, line 25 to page 29, line 22 of the patent application. As pointed out in the patent application, the entry of the viewing confirmation code by the viewer may be made through a keyboard, a mouse, or another input device. The invention also provides for

detailed analysis of the code input by the viewer in determining the viewer's attentiveness. Considerations are given to the timing of the presentation of the viewing confirmation codes and the corresponding responses, any intervening delays, and like information.

All pending claims, erroneously stated on the PTOL-326 form and at pages 2 and 29 of the Office Action as claims 29-69, were rejected as unpatentable over Lemelson et al. (U.S. Patent 5,832,788, hereinafter Lemelson), in view of Vogel (U.S. Patent 5,453,015), and further in view of Von Kohorn (U.S. Patent 5,249,044). In addition, claim 37 was also rejected over the same combination of references and further in view of Bates et al. (U.S. Patent 6,681,396, hereinafter Bates). Upon perfection of the priority claim, Bates cannot be prior art to the present patent application. Moreover, since claim 37 is a dependent claim and Bates is not asserted to supply any part of the parent claims 36 and 29, shown here to be patentable claims, there is no further discussion of Bates. All of the rejections are respectfully traversed.

With regard to at least six of the claims (claims 32, 35, 37, 41, 48, and 59), the Examiner relied upon Official Notice to supplement Lemelson, Vogel, and Von Kohorn. Applicants continue to traverse all of these rejections, particularly with respect to the claims now presented. Applicants maintain the seasonable traversal with regard to the alleged "Official Notice" which has not been responded to with the proof requested, and extend that demand to the claims newly rejected based upon "Official Notice".

Because of the generic way in which all of the claims were rejected, notwithstanding the dual rejection of claim 37, most of the following remarks is generic as to the claims now presented and the principal rejection.

Lemelson concerns an instructional system in which there is real-time interaction between a teacher or lecturer and students who are attending the lecture either at the lecture site or remotely. From time-to-time the teacher or one of his confederates, during the lecture, poses questions to the students through terminals employed by the students. The students then provide answers to the questions that are posed and the answers that are supplied are collected at a central station and are evaluated by the teacher or another person. The information derived from the answers supplied by the students is employed by the instructor, either directly or after statistical analysis, to alter the course of the lecture. The information derived from the answers supplied by the students is an indication of how well the students

have comprehended the instructional material. The lecturer can thereby determine whether to increase or decrease the speed of the lecture or alter the way information is being presented in order to tailor the course, continuously, to the learning abilities and success of the students.

An essential feature of the Lemelson system is the presentation of substantive questions to the students and the analysis of substantive responses. See the Abstract and Summary sections of Lemelson. While all of the specification of Lemelson is important to understanding what is disclosed there, attention is specifically directed to the passages from column 2, line 47 through column 3, line 19. The cited portions of Lemelson demonstrate that the essence of the Lemelson system is the provision to the students of substantive questions and substantive responses. Lemelson even mentions the presentation of essay questions and responses. See column 5, lines 34-39. If, in response to a question, the student merely reproduces, in the response, the question, the response and the entire Lemelson system are useless. That response is not only the wrong answer, it is no answer.

In the invention, a viewer of an audiovisual program is, from time-to-time, requested to enter a presented viewing confirmation code and, to be correct, the viewing confirmation code entered must be identical to (or within a range of agreement with) the viewing confirmation code presented. All of the pending claims require a function of an audiovisual terminal or a step of a method that is, essentially, each time a viewing confirmation code is presented to the viewer, a viewing confirmation code identical to the viewing confirmation code presented is entered to confirm viewing of the audiovisual program, with the viewing confirmation code entered being transmitted to a principal who authenticates viewing of the audiovisual program being presented. As noted, the invention according to claims 68 and 69 does not require exact agreement between the viewing confirmation code presented and the viewing confirmation code entered.

The Examiner has analogized the question and answer feature of Lemelson to the viewing confirmation code feature of the claimed invention. However, there is no proper analogy. In Lemelson a substantive question is presented and a substantive answer is expected. Even if the answer to the question is selected from a group of proposed answers, i.e., a multiple-choice question, or if the answer is simply a "yes" or "no", the answer is clearly different from the question. If the presentation of the viewing confirmation code in the invention is considered to be a question, then the correct "answer" is the question, i.e., entry of an identical reproduction of the viewing confirmation code presented. Lemelson

never discloses such an arrangement and cannot even suggest such an arrangement because it would be contrary to the intended and desired operation of the Lemelson system. If, in the Lemelson system, all of the answers received were identical to the questions, the lecturer in Lemelson could gather no information as to how well the material being presented was being comprehended and could not determine whether to make some adjustment in the presentation of that material.

Vogel does not supply the feature of the invention disclosed and claimed that is missing from Lemelson. In fact, Vogel was not cited as potentially supplying that feature. Instead, Vogel was cited as supplying various timing features that are part of some, but not all, of the claims. Vogel describes a system including numerous terminals for selecting one of multiple alternative answers to questions by pressing an appropriate button. Vogel describes supplying these terminals to audience members of a quiz show. The audience members play the quiz game with a contestant and supply answers to questions by depressing one of the buttons corresponding to a particular response to a question. Because the answer to a question is ultimately disclosed in the quiz show, the time for making a selection by the audience member is limited to avoid cheating. Unlike Lemelson, in Vogel it is actually impossible to respond to a question with the same question because the input device in Vogel has no alphanumeric keys. Therefore, Vogel cannot even be analogized to the feature of the invention in which a viewing confirmation code presented to a viewer must be identically reproduced to confirm that the viewer is actually viewing the audiovisual program. Stated another way, no matter how one attempts to modify Lemelson with Vogel, the important feature of the invention regarding supplying, in response to a presented viewing code, that same viewing code to a principal to verify attentiveness is not found.

The Office Action mailed October 5, 2005, acknowledges the failure of Lemelson, as hypothetically modified by Vogel, to supply all of the limitations of the pending claims and, thereby, failing to establish *prima facie* obviousness of any of the pending claims. To fill the acknowledged gap, reliance was placed on Von Kohorn. However, Von Kohorn does not support the proposition for which it was cited. In fact, it is even doubtful that Von Kohorn is analogous prior art that can be properly applied in an obviousness rejection of the claims.

To be available for use in an obviousness rejection, a publication must either be in the same field as the inventor's endeavor or be reasonably pertinent to the problem with which the inventor was concerned. Otherwise, the publication is non-analogous art and may not be

part of an obviousness rejection. See, MPEP 2141.01(a). Von Kohorn meets neither test and, therefore, must be withdrawn as a reference.

The field of endeavor of the invention is remote education that is reliable in terms of attentiveness of the student to avoid cheating regarding courses at least attempted. The field of Von Kohorn, according to its column 1, is the generation of tokens or product discount coupons to members of a broadcast audience located remotely from the source of the broadcast. Clearly the fields of endeavor of the inventor and Von Kohorn are different.

The problem with which the invention is concerned, as stated at page 2 of the present patent application, is ensuring that students receiving educational audiovisual programs are actually attentive to them. While providing an examination concerning the course material at the end of such a course may measure knowledge regarding the course material, the examination results tell nothing about whether that knowledge came from another source, independent of attention or lack of attention to the remote-origin educational program. The problem to which Von Kohorn is directed is increasing the redemption rate of product discount coupons by broadcasting information on such coupons to potential shoppers and permitting the shoppers to select and print coupons for products of potential interest. There is no relationship between the problem sought to be solved in the invention and the problem addressed by Von Kohorn. Therefore, Von Kohorn fails both of the alternative analogous art tests, is not analogous art to the invention, and cannot be applied in an obviousness rejection of the pending claims. Upon withdrawal of Von Kohorn, all rejections must be withdrawn since Von Kohorn is critical to every rejection of all pending claims.

Even if Von Kohorn were analogous art that could be applied in rejecting the pending claims, Von Kohorn does not include the disclosure for which it was cited and does not fill the acknowledged gap between the claimed invention and the combination of Lemelson and Vogel. According to the description of Von Kohorn that appears at page 4, and elsewhere, in the Office Action, "Von Kohorn teaches a viewing code that is identical to the viewing code where the code is transmitted after the presentation of the program so as to act as a safeguard against cheating." This statement is not understood; of course the viewing code, if there is one in Von Kohorn, is identical to itself. In the invention, the important identity is between the viewing confirmation code presented and the viewing confirmation code input by the person paying attention to the audiovisual presentation and that is returned to the presenting principal. As discussed below, there is no description of the broadcast of any code in Von

Kohorn after “the presentation of the program” and that timing has relevance only to dependent claim 33, not the broadly claimed invention. According to the Office Action, applying this characterization of Von Kohorn, one of skill in the art would have modified Lemelson to include such a “viewing code”. However, the cited passage of Von Kohorn, from column 5, line 6, through column 6, line 45, does not support any part of the characterization given Von Kohorn in the rejection and certainly does not suggest any modification of Lemelson that would produce the invention.

Von Kohorn describes a very strange system that is focused on a hand-held generating unit 14. That generating unit basically includes a keyboard, a memory, and a printer. A display may also be present. The user has the unit loaded with a special substrate, basically a roll of paper, that can be verified as genuine and from an authorized source. Then, the user of the unit 14 watches television to obtain information on products of interest. When a product of interest appears, information is supplied for inputting to the generating unit through the keyboard in order to print a product discount coupon that is redeemed at a participating merchant. Among the information that may be obtained from the television is, in some instances, verification data that must be entered into the generating unit and recorded on a coupon that is printed to make the coupon usable or to qualify for a prize that might be awarded upon redemption of the coupon.

Even if it considered that the verification data or other product data obtained by watching television is a “viewing code” that can only be obtained by attentive watching, there is no requirement in Von Kohorn of inputting that information each time it appears, as there is in the invention for the viewing confirmation code, to indicate attentiveness. In fact, the whole purpose of Von Kohorn is to permit the watcher to select and input only those product codes and verification data that pertain to particular products of interest, ignoring similar information that pertains to products of no interest. Von Kohorn teaches against the important aspect of the invention of verifying attentiveness each time a viewing confirmation code appears by requiring input of each such viewing confirmation code presented.

Moreover, at least in the preferred version of Von Kohorn’s generating unit there is not even a possibility in Von Kohorn of transmitting the “viewing code” to a principal that is the source of the “viewing code” needed to print valid product discount coupons.

“The system and method described above has the advantage that the generating unit 14 need not be programmed or controlled by external sources such as by electronic signals. The only electronic communication flow is from the central location to the TV-viewers, and the only information input into the generating unit is that entered by a TV-viewer on the input keys 20 or other entry device. The absence of two way communication significantly reduces capital investment and operating costs of the system.” (Von Kohorn, column 6, lines 46-53.)

Therefore, there is no description, and clearly no suggestion, in Von Kohorn for receipt of a “viewing code” by a viewer and entry and re-transmission of the identical “viewing code” to the broadcaster to indicate attentiveness to the broadcast. It follows that Von Kohorn cannot suggest modification of Lemelson to send back to the lecturer a code identical to the code sent by the lecturer and thereby suggest that aspect of the invention. Even in the only version of the generating unit 14 described by Von Kohorn that permits two-way communication, the communication is for requesting the broadcaster to display information about a specific product, not to respond to the broadcaster in any way. See, Von Kohorn at column 6, lines 55-61. Thus, no part of Von Kohorn can suggest an identical viewing confirmation code exchange between a broadcaster and viewer from which Lemelson might be theoretically modified in an attempt to meet the claimed invention. In other words, if Von Kohorn were used to modify Lemelson, *prima facie* obviousness could still not be established as to any pending claim.

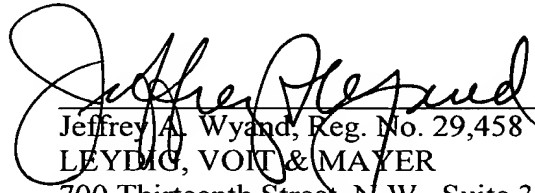
Likewise, the assertion that Von Kohorn transmits the “viewing code” after the presentation of the program is both at odds with Von Kohorn and irrelevant to the broadly claimed invention. See Von Kohorn at column 7, lines 21-24, the description of recording a broadcast for later viewing at columns 10 and 11 of Von Kohorn, and the explanation at column 12, lines 51-65 of Von Kohorn that live viewing of the broadcast is not an important part of his system. The comment regarding the timing of transmission of “viewing codes” in Von Kohorn is incorrect and has potential relationship only to dependent claim 33. Thus, the comment does not require further response.

In summary, Von Kohorn is not analogous art that can properly applied in an obviousness rejection of the present patent application. If Von Kohorn were analogous art, it does not provide the disclosure asserted to be present there, and the disclosure of Von Kohorn that is present does no suggest any modification of Lemelson that could lead in the direction

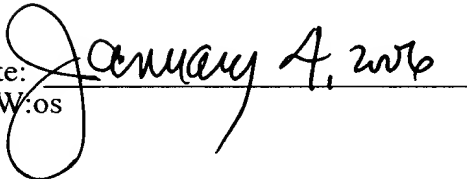
of the claimed invention. Therefore, upon reconsideration, all of the rejections should be withdrawn and all of claims 29 and 31-69 allowed.

Since no claim is amended in response to the Official Action, any new rejection relying upon a different legal ground or newly applied prior art, cannot properly be a final rejection.

Respectfully submitted,


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